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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4933/2024**

DR. BHARATHI SAXENA

..... Petitioner

Through

Mr. Pradeep Rana, Mr. Inderpreet Singh, Mr. Ankit Rana and Mr. Tushar, Advocates.

Mr. Akshay Bhandari, Mr. Janak Raj Ambavat, Ms. Megha Saroa, Mr. Anmol Sachdeva, Mr. Kushal Kumar, Advocates.

versus

THE STATE NCT OF DELHI AND ANR.

..... Respondents

Through

Ms. Priyanka Dalal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **02.07.2024**

CRL.M.A. 18876/2024 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 4933/2024 & CRL.M.A. 18875/2024

1. The Petitioner has approached this Court for quashing FIR No.663/2015 dated 25.06.2015 registered at Police Station Punjabi Bagh for an offence under Section 304A IPC. However, the learned Counsel for the Petitioner is restricting himself to the challenge to the Order dated 28.04.2023 by which the Trial Court in the application filed by the Petitioner challenging an Order dated 25.03.2019 by which cognizance has been taken and the Trial Court has condoned the delay on its own without even there being an application for condonation of delay by the prosecution.

2. The facts in brief are that late Gyan Chand Gupta was admitted in



Maharaja Agrasen Hospital on 11.04.2010. Unfortunately, on 12.04.2010 late Gyan Chand Gupta fell down from the bed and lost his life.

3. Proceedings were initiated before the Medical Council of India and the Medical Council of India vide Order dated 17.05.2014 has passed the following order:-

“I am directed to inform you that the above matter was considered by the Ethics Committee at its meetings held on 28th & 29th June, 2013 & 4th January, 2014 and the following recommendation of the Ethics Committee was approved by the Executive Committee at its meeting held on 16th April, 2014:-

“The Ethics Committee considered the appeal filed by Sh. S.R Aggarwal, Rohini, Delhi against Order dated 09.10.2012 passed by Delhi Medical Council and noted that Delhi Medical Council vide its order dated 09.10.2012 held that:-

- the all of the patient from the bed was an accident and not due to any act of negligence. The subsequent treatment initiated to deal with the brain injury was as per the standard protocol in such case.*

The Disciplinary Committee is of the view that even if the surgery had been done at the earliest occasion, the outcome in this case may not have been favourable, considering the overall high risks and seriousness of the condition of the patient.”

The Disciplinary Committee dated 03.10.2012 deliberated on the decision of DMC dated 24.08.2012 and further decided as under:-

“while confirming the decision of the Disciplinary Committee, the Council observed that in the facts and circumstances of this case, Medical Superintendant, Maharaja Agrasen Hospital be issued a caution for the administrative shortcomings as highlighted in the Disciplinary Committee Order.”



The Ethics Committee noted that both the parties i.e. Appellant, Sh. S.R. Aggarwal and Respondents, Dr. Anand Bansal, Medical Superintendent of Maharaja Agrasen Hospital, New Delhi have appeared before the Ethics Committee for hearing. The ICU incharge at that point of time did not appear before the Committee for hearing.

The Ethics Committee heard the deposition of both the parties in detail and after going through all the relevant records & documents, the Committee found that ICU of Maharaja Agrasen Hospital is a 30 bedded unit having Nurses to Patient ratio of 1:2. The patient fell off the ICU bed and was picked up by the staff in the ICU after hearing the sound of fall. The subsequent notes and investigations suggest that the patient suffered from subdural hematoma which was evacuated next day.

Falling of a patient from ICU bed is a serious matter and amounts to serious negligence resulting in death of a patient.

The Ethics Committee takes a serious note and decided to issue a strict warning to the hospital authorities, Medical Superintendent and ICU in charge.

A separate letter should be written to Directorate of Health Services to take appropriate action against the authorities of Maharaja Agrasen Hospital, New Delhi for grossly deficient staffing in ICU which resulted in the death of a patient by a fall from the hospital bed causing serious head injury.”

4. Material on record indicates that an FIR has been registered on 25.06.2015 but the Trial Court by an Order dated 25.03.2019 has taken



cognizance of the offence, which is beyond the period of three years as mentioned in Section 468 (2)(c) CrPC.

5. Learned Counsel for the Petitioner states that while passing the Order dated 25.03.2019, the Magistrate should have satisfied himself that there are sufficient reasons to condone the delay in taking cognizance of the offence. He states that in an application filed by the accused before the concerned court bringing it to the knowledge of the concerned court that the cognizance could not have been taken because the three years threshold bar has been passed, the concerned court *vide* Order dated 28.04.2023 has without an application on behalf of the prosecution for condonation of delay, has condoned the delay, which is beyond the powers of the Magistrate.

6. Attention is also drawn to Section 469 CrPC and it was stated that the authorities were in knowledge of the offence since 17.05.2014 and therefore the cognizance of the offence ought to have been taken within three years from the date by which the authorities were informed of the offence. He therefore states that the Magistrate has exceeded his authority in condoning the delay without an application for the same by the prosecution.

7. Issue notice.

8. Ms. Priyanka Dalal, learned APP for the State, accepts notice.

9. On steps being taken, let notice be issued to Respondent No.2 through all permissible modes.

10. List on 12.08.2024 along with W.P.(CRL) 1421/2024.

SUBRAMONIUM PRASAD, J

JULY 2, 2024

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